

Lakewood Engineering and Mfg., Inc. and Warehouse, Mail Order, Office, Technical and Professional Employees Union, Local 743, a/w International Brotherhood of Teamsters, AFL-CIO. Case 13-CA-31381

April 23, 1993

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On January 19, 1993, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 13-RC-18433. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On March 17, 1993, the General Counsel filed a motion to transfer proceedings to the Board and Motion for Summary Judgment. On March 18, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative, but attacks the validity of the certification on the basis of its objections to conduct affecting the results of the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). There are no factual issues regarding the Union's request for information because the Respondent admitted

that it refused to furnish the information.¹ Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Illinois corporation, with an office and places of business in Chicago, Illinois, has been engaged in the manufacturing of portable electric fans, heaters, and chair swivels. During the calendar year ending December 31, 1992, a representative period, the Respondent, in conducting its business operations, sold and shipped from its Chicago, Illinois facilities products, goods, and materials valued in excess of \$50,000 directly to points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held April 3, 1992, the Union was certified on November 4, 1992, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time production, maintenance, tool room and warehouse employees employed at the Employer's facilities now located at 1901-45 W. Carroll Street, 1756 W. Lake Street, 501 N. Sacramento Street, 212 N. Carpenter Street, and 315 N. Racine, Chicago, Illinois; excluded are all other employees including quality assurance, product engineering, manufacturing engineering, customer service, sales, office expeditor, security, office and office clerical employees, temporary employees, supervisors and assistant supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since on or about November 9 and December 9, 1992, the Union has requested the Respondent to bargain and to furnish information which is necessary for and relevant to its duty as collective-bargaining representative. At all times since about November 9,

¹ In its answer, the Respondent states that it is without knowledge whether the requested information is necessary for and relevant to the Union's performance of its duties. We note, however, that the wage and employment information sought by the Union is presumptively relevant and that the Respondent has not attempted to rebut the relevance of that information. See *Central National Gottesman, Inc.*, 305 NLRB No. 97 (Nov. 26, 1991).

1992, the Respondent has refused these requests. We find that these refusals constitute an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after November 9, 1992, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Lakewood Engineering and Mfg., Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Warehouse, Mail Order, Office, Technical and Professional Employees Union, Local 743, a/w International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employ-

ment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time production, maintenance, tool room and warehouse employees employed at the Employer's facilities now located at 1901-45 W. Carroll Street, 1756 W. Lake Street, 501 N. Sacramento Street, 212 N. Carpenter Street, and 315 N. Racine, Chicago, Illinois; excluded are all other employees including quality assurance, product engineering, manufacturing engineering, customer service, sales, office expeditor, security, office and office clerical employees, temporary employees, supervisors and assistant supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

(c) Post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 13 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Warehouse, Mail Order, Office, Technical and Professional Employees Union, Local 743, a/w International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time production, maintenance, tool room and warehouse employees employed at our facilities now located at 1901-45 W. Carroll Street, 1756 W. Lake Street, 501 N. Sacramento Street, 212 N. Carpenter Street, and 315 N. Racine, Chicago, Illinois; excluded are all other employees

including quality assurance, product engineering, manufacturing engineering, customer service, sales, office expeditor, security, office and office clerical employees, temporary employees, supervisors and assistant supervisors as defined in the Act.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive representative of the unit employees.

LAKEWOOD ENGINEERING AND MFG.,
INC.